

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

RODRICK JONES,

Plaintiff,

v.

Case No. 12-12125

WHITE,

Defendant,

/

**OPINION AND ORDER DENYING “APPLICATION TO PROCEED WITHOUT
PREPAYMENT OF FEES,” DISMISSING COMPLAINT UNDER 28 U.S.C. § 1915(g),
AND TERMINATING AS MOOT “APPLICATION FOR APPOINTMENT OF
COUNSEL”**

Plaintiff Rodrick Jones, a state prisoner currently incarcerated at the Bellamy Creek Correctional Facility in Ionia, Michigan, seeks to file a pro se civil complaint without prepayment of fees. See 28 U.S.C. § 1915(a)(1). Plaintiff's complaint seeks redress from Defendant White, a Michigan state trooper, for unlawful detention and due-process violations based upon Defendant's arrest of Plaintiff on August 30, 2007. Because Plaintiff has previously filed three federal actions that were summarily dismissed under §§ 1915(e)(2)(B) and 1915A(b), the court will deny his application to proceed *in forma pauperis* and dismiss his complaint under 28 U.S.C. § 1915(g).

The Prisoner Litigation Reform Act of 1996 (“PLRA”) contains a “three strikes” provision that prohibits a prisoner from pursuing a civil action without prepayment of the filing fee if:

the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

28 U.S.C. § 1915(g); see also *Wilson v. Yaklich*, 148 F.3d 596, 602 (6th Cir. 1998); *Witzke v. Hiller*, 966 F. Supp. 538, 539-40 (E.D. Mich. 1997). If a complaint “clearly satisfie[s] the provisions of § 1915(g) at the moment of filing, the district court ha[s] no authority to consider the merits of the complaint.” *Shabazz v. Campbell*, 12 F. App’x 329, 330 (6th Cir. 2001); cf. *Dupree v. Palmer*, 284 F.3d 1234, 1236 (11th Cir. 2002) (“[T]he proper procedure is for the district court to dismiss the complaint without prejudice when it denies the prisoner leave to proceed *in forma pauperis* pursuant to the provisions of § 1915(g).”).

A search of federal court records indicates that Plaintiff, during his incarceration, has had at least three prior civil complaints dismissed by this court under §§ 1915(e)(2)(B) and 1915A(b) for being frivolous, malicious, or failing to state a claim upon which relief could be granted. See *Jones v. White*, No. 10-15156 (E.D. Mich. filed Dec. 29, 2010); *Jones v. Brown*, No. 10-12391 (E.D. Mich. filed June 17, 2010); *Jones v. White*, No. 10-12308 (E.D. Mich. filed June 11, 2010). Moreover, Plaintiff has not alleged any facts which would establish that he is in imminent danger of serious physical injury, so he does not come within the exception to the three-strikes rule. See *Mulazim v. Mich. Dep’t of Corr.*, 28 F. App’x 470, 472 (6th Cir. 2002). Plaintiff’s civil rights complaint is therefore subject to dismissal pursuant to § 1915(g). Accordingly,

IT IS ORDERED that Plaintiff’s “Application to Proceed Without Prepayment of Fees and Costs” [Dkt. # 2] is DENIED.

IT IS FURTHER ORDERED that the complaint [Dkt. # 1] is DISMISSED pursuant to 28 U.S.C. § 1915(g). This dismissal is without prejudice to the filing of a new complaint with payment of the \$350.00 filing fee.

IT IS FURTHER ORDERED that Plaintiff's "Application for Appointment of Counsel" [Dkt. # 3] is TERMINATED AS MOOT.

Finally, the Court concludes that an appeal from this order would be frivolous and not taken in good faith. See 28 U.S.C. § 1915(a)(3); *McGore v. Wrigglesworth*, 114 F.3d 601, 610-11 (6th Cir. 1997), *overruled on other grounds by Jones v. Bock*, 549 U.S. 199 (2007).

s/Robert H. Cleland
ROBERT H. CLELAND
UNITED STATES DISTRICT JUDGE

Dated: May 31, 2012

I hereby certify that a copy of the foregoing document was mailed to counsel of record on this date, May 31, 2012, by electronic and/or ordinary mail.

s/Lisa Wagner
Case Manager and Deputy Clerk
(313) 234-5522